

1 BINGHAM MCCUTCHEN LLP
2 DONN P. PICKETT (SBN 72257)
3 FRANK M. HINMAN (SBN 157402)
4 KRYSTAL N. BOWEN (SBN 163972)
5 SUJAL J. SHAH (SBN 215230)
6 SUSAN J. WELCH (SBN 232620)
7 FRANK BUSCH (SBN 258288)
8 NITIN JINDAL (SBN 257850)
9 Three Embarcadero Center
10 San Francisco, CA 94111-4067
11 Telephone: 415.393.2000
Facsimile: 415.393.2286
12 donn.pickett@bingham.com
frank.hinman@bingham.com
13 krystal.bowen@bingham.com
sujal.shah@bingham.com
14 susan.welch@bingham.com
frank.busch@bingham.com

15 Attorneys for Defendant
16 Intel Corporation

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN JOSE DIVISION

20 IN RE: HIGH-TECH EMPLOYEE
21 ANTITRUST LITIGATION

22 THIS DOCUMENT RELATES TO:
23 ALL ACTIONS

24 Master Docket No. 11-CV-2509-LHK

25 **DECLARATION OF FRANK BUSCH IN
26 SUPPORT OF DEFENDANTS' JOINT
27 ADMINISTRATIVE MOTION TO SEAL**

28 Date Consolidated Amended Compl. Filed:
September 13, 2011

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36 Master Docket No. 11-CV-2509-LHK

37 DECLARATION OF FRANK BUSCH

1 I, Frank Busch, declare:

2 1. I am an attorney duly licensed to practice law in the State of California, and an
3 associate at the firm of Bingham McCutchen LLP, attorneys for Defendant Intel Corporation
4 (“Intel”). I have personal knowledge of the facts set forth herein, except those matters stated on
5 information and belief. On behalf of Intel, I make this declaration pursuant to Civil Local Rule
6 79-5(d) and 7-11(a) to demonstrate that good cause exists for the documents described below to
7 remain under seal. I make this declaration in support of Defendants’ Joint Administrative
8 Motion to Seal filed concurrently with this Declaration. If called and sworn as a witness, I could
9 and would competently testify to the matters stated below.

10 **The Intel Confidential Information That Should Be Sealed**

11 2. I have reviewed the sealed portions of: (1) Defendants’ Opposition to
12 Supplemental Class Certification Motion (“Opposition”) and the Declaration of Christina Brown
13 in support (“Brown”); (2) The Supplemental Expert Report of Professor Kevin M. Murphy
14 (“Murphy”); and (3) The Expert Report of Kathryn Shaw, Ph.D. (“Shaw”) and the Declaration of
15 Lin Khan in support (“Khan”) filed concurrently with this declaration. As described below, they
16 quote from and reference Intel’s documents and data that are designated “CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY” (“AEO”) pursuant to the Protective Order in this Action (Dkt.
18 107).

19 3. The types of information reflected in the documents at issue here are similar to the
20 types described in the Declaration of Tina M. Evangelista in Support of Plaintiffs’
21 Administrative Motion to File under Seal Plaintiffs’ Notice of Motion and Motion for Class
22 Certification, and Memorandum of Law in Support, filed on October 9, 2012 (Dkt. 203)
23 (“Evangelista Declaration”).

24 **The Reasons For Sealing The Redacted Information And Underlying Documents**

25 4. According to the Evangelista Declaration, because the types of information
26 contained in redacted portions of the above-referenced filings are similar to the types of
27 information described therein, the following reasons support the motion to seal.

28 5. Furthermore, where indicated below the Court has already ruled that the specific

1 information contained in redacted portions of the above-referenced filings may be filed under
2 seal. *See Order Granting in Part and Denying in Part Motions to Seal (“Sealing Order”), Dkt.*
3 273.

4 6. The Intel documents and data quoted or described in the above-referenced filings
5 contain information regarding confidential business practices that gives Intel a competitive
6 advantage in recruiting, retaining and compensating its employees

7 7. Intel derives independent economic value from the strategic information and data
8 contained in these types of documents not being generally known to the public or to other
9 persons, including Intel’s many labor market competitors, who can obtain economic value from
10 its disclosure or use.

11 8. It is Intel’s practice to treat these types of documents and data as confidential, and
12 not to disclose them outside the company. I am informed and believe that Intel has taken
13 reasonable steps to ensure that these documents remain confidential, including designating them
14 AEO pursuant to the Protective Order filed in this Action.

15 9. Specifically, Intel seeks to seal the following Intel confidential, commercially
16 sensitive information in the above-referenced filings:

- 17 • **Opposition at 21:10-13** reflects Intel’s compensation strategies. In particular, it
18 shows where Intel employees work, and what specific survey information Intel uses
19 to evaluate its compensation. A previous request to seal the cited portion of the
20 McKell Declaration was approved in the Sealing Order.
- 21 • **Brown at Ex. 9 pgs 180-183 and 205-207** reflects Intel’s compensation strategies
22 and practices. In particular, the redacted pages discuss compensation matching
23 strategies, special market adjustments, and market targeting strategies.
- 24 • **Murphy at Exhibits 1 and 2** reflects Intel’s compensation strategies and practices.
25 In particular, the redacted exhibits show compensation for individual employees
26 within certain job categories at Intel.
- 27 • **Murphy at Appendix A** reflects Intel’s compensation strategies and practices. In
28 particular, it discusses a number of individual Intel employees and the evolution of

1 their compensation over time. Previous requests to seal discussion of these specific
 2 employees were approved in the Sealing Order.

- 3 • **Murphy at Appendix B** reflects Intel's employment and compensation practices. In
 4 particular, it provides headcounts and changes in compensation for a large number of
 5 Intel job codes.
- 6 • **Shaw at footnote 26** reflects Intel's compensation practices. In particular, the
 7 redacted reference describes specifics relating to Intel's strategy for using
 8 compensation surveys to set employee compensation. A previous request to seal the
 9 cited portion of the McKell Declaration was approved in the Sealing Order.
- 10 • **Shaw at footnote 33** reflects Intel's compensation practices. In particular, the
 11 redacted reference describes specifics relating to Intel's strategy for using Special
 12 Market Adjustments as an element of employee compensation.
- 13 • **Shaw at footnote 35** reflects Intel's compensation practices. In particular, the
 14 redacted reference describes specifics relating to the ways Intel's managers apply
 15 their focal budgets.
- 16 • **Shaw at Appendix C paragraphs 13-16** reflects Intel's compensation practices. In
 17 particular, the redacted text describes the elements of compensation Intel uses and the
 18 way it allocates each element to its employees.
- 19 • **Shaw at Appendix D paragraphs 15-16** reflects Intel's compensation practices. In
 20 particular, the redacted text describes specific elements that Intel relies upon in
 21 setting compensation.
- 22 • **Shaw at Appendix E1** reflects Intel's employment practices. In particular, the
 23 redacted text describes Intel's employment structure by listing the number of
 24 managers and employees, along with seniority, for the redacted job titles.
- 25 • **Shaw at Appendices F and G** reflects information contained in Intel's recruiting
 26 and/or compensation data. In particular, each chart presents this information in a
 27 sufficiently detailed manner to disclose sensitive details of Intel's business structure
 28 to Intel's competitors.

- 1 • **Khan at Ex. 8 pages 73-74, 206** reflects Intel's compensation and recruiting
2 practices. In particular, it discusses Intel's method for using its compensation
3 structure to attract and retain scarce talent.
- 4 • **Khan at Ex. 8 pages 85-86** reflects Intel's compensation practices. In particular, it
5 discusses the deponent's compensation, performance evaluations, and other factors.
- 6 • **Khan at Ex. 8 pages 87-92, 181-82, 186-90** reflects Intel's compensation practices.
7 In particular, it discusses Intel's method for generating compensation
8 recommendations for specific jobs within Intel's structure of pay grades.
- 9 • **Khan at Ex. 8 pages 101-02, 113, 123-24, 147** reflects Intel's compensation
10 practices. In particular, it discusses Intel's method for transmitting compensation
11 information to managers, and for providing managers the tools they need to
12 accurately compensate their reports.
- 13 • **Khan at Ex. 8 page 269** reflects Intel's compensation practices. In particular, it
14 discusses Intel's method for distributing special market adjustments.
- 15 • **Khan at Ex. 16 page 203** reflects Intel's compensation practices. In particular, it
16 discusses Intel's method for reviewing employee salaries.
- 17 • **Khan at Ex. 24** reflects Intel's employment practices. In particular, it is an internal
18 Intel document containing job descriptions and categorization information for a broad
19 array of Intel jobs.

The Particularized Harm Disclosure Would Cause

20 10. According to the Evangelista Declaration, because the types of information
21 redacted from the above-referenced documents are similar to the types of information described
22 therein, Intel would suffer the following particularized harm if the redacted information is
23 disclosed to the public. The public disclosure of the Intel confidential information contained in
24 Intel's documents and data described above would put Intel at a significant competitive
25 disadvantage in terms of its ability to identify, recruit, and compensate its employees. Public
26 disclosure of Intel's detailed internal analysis of its recruiting, compensation, and related
27 strategies, policies and practices would also deprive Intel of its investment in developing those
28 strategies, policies and practices.

1 strategies and give the scores of other companies with which Intel competes an unearned
2 advantage by giving them the benefit of Intel's investments. Public disclosure of Intel's detailed
3 compensation data would also give those other companies an unearned advantage by giving them
4 the benefit of Intel's compensation strategies, compensation levels, and other related
5 information.

6 11. Because these documents cannot be disclosed to the public without causing this
7 harm, their contents should be protected by redacting them and each reference to their contents
8 from public filings.

9 I declare under penalty of perjury that the foregoing is true and correct. Executed
10 in East Dennis, Massachusetts on June 22, 2013.

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/s/ Frank Busch

Frank Busch

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